

Letter of Findings: 65-20200180
Indiana Oversize/Overweight Proposed Assessment
For the Year 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier was responsible for the oversize/overweight civil penalty but the Department agrees that Motor Carrier provided sufficient evidence to reduce the civil penalty.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Motor Carrier protests the assessment of oversize/overweight civil penalty.

STATEMENT OF FACTS

Motor Carrier is based outside of Indiana. On July 18, 2019, Motor Carrier's commercial motor vehicle was stopped by the Indiana State Police ("ISP") for being oversize/overweight. As a result, the Indiana Department of Revenue ("Department") assessed Motor Carrier an oversize/overweight ("OS/OW") civil penalty.

Motor Carrier protested the assessment. Motor Carrier requested an Administrative Hearing. This Letter of Findings results based on the information available within the protest file and the hearing. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protests the imposition of a \$5,000 civil penalty. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Motor Carrier was transporting an oversize load in excess of the gross weight allowed under IC § 9-20-4-1.

As a threshold issue, it is Motor Carrier's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, in relevant part, "an owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that "a person who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation." According to IC § 9-20-18-14.5(b), "A person who obtains a permit under this article and violates this article is subject to a civil penalty of not more than five hundred dollars (\$500) for the first violation and not more than one thousand dollars (\$1,000) for each subsequent violation."

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." According to IC § 9-20-18-14.5(a)(3), these listed taxes are in addition to "any fines imposed by a court," such as a traffic stop.

In this case, Motor Carrier protested the assessment and provided an explanation in its hearing. Based on the ISP report, the Department issued Motor Carrier a No Permit Civil Penalty. According to the ISP report, Motor Carrier transported cargo in excess of the gross amount allowed under IC § 9-20-4-1. Taxpayer explained it was hired by third party to transport a piece of machinery in which it was loaded and tied by the third party to its trailer. Taxpayer did not have the ability to move the machinery once it was loaded.

Motor Carrier has established that it did not control the loading and that no scale was available at the time of loading. Given the totality of the circumstances, Motor Carrier provided sufficient explanation to reduce the penalty. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

FINDING

Motor Carrier's protest is sustained in part and denied in part. The protest is sustained to the extent that the initially assessed amount is not due but denied to the extent that there is still a reduced penalty.

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